

AMENDED IN SENATE AUGUST 10, 2000

AMENDED IN SENATE AUGUST 31, 1999

AMENDED IN SENATE AUGUST 16, 1999

AMENDED IN SENATE JULY 8, 1999

AMENDED IN ASSEMBLY MAY 19, 1999

AMENDED IN ASSEMBLY MAY 6, 1999

AMENDED IN ASSEMBLY APRIL 8, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 1614**

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**Introduced by Assembly Member Wright**  
**(Coauthors: Assembly Members Vincent and Washington)**  
(Coauthor: Senator Murray)

February 26, 1999

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An act to ~~amend Section 3653 of, and to add Sections 3651.5~~  
~~7634.5, and 17431 to, the Family Code, and to add Section~~  
~~11475.19 to the Welfare and Institutions Code~~, relating to child  
support.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1614, as amended, R. Wright. Child support.

Under existing law, a support order may be modified or terminated at any time as the court determines necessary, subject to certain exceptions. Existing law requires each county to maintain a single unit within the district attorney's

office having responsibility to establish, modify, and enforce, child support orders, as specified.

This bill would provide that, *operative July 1, 2001*, incarceration of a support obligor in a ~~state or county~~ penal facility for a period in excess of 90 days may be a change of circumstances upon which a support modification motion may be based, as specified. The bill would require the ~~Department of Corrections or the~~ county sheriff to ~~provide an inmate~~, at the time of ~~such a remand, sentencing, or the Board of Prison Terms, at the time of revocation of parole, to provide each person so sentenced or former parolee, as applicable, a form to enable the inmate be used to obtain a modification of support, and if the~~. This bill would also require that if a local child support agency receives a request for modification from an inmate who is a support obligor subject to proceedings ~~by the district attorney, require the district attorney to establish or enforce support, the local child support agency must~~ review the case and either make a motion to the court for modification of support, or provide the support obligor with a written statement regarding why the ~~district attorney~~ local child support agency will not make the motion and advising the support obligor that he or she may make the motion on his or her own behalf, as specified. The bill would direct the Judicial Council to develop by July 1, 2001, forms to be used for obtaining a modification of support. By imposing new duties on local personnel, this bill would create a state-mandated local program.

~~Existing law provides that, if an order decreasing or terminating support is entered retroactively, the support obligee shall not be obligated to repay any amounts paid pursuant to the prior order that are in excess of the amounts due pursuant to the retroactive order.~~

~~This bill would instead provide that, in those circumstances, the support obligee may be obligated to repay those excess amounts, on terms ordered by the court after consideration of specified factors.~~

~~Existing law requires that counsel be appointed to represent indigent defendants in paternity proceedings where the state appears as a party or appears on behalf of a mother or child. Existing law also provides that indigent~~

~~persons may be entitled to proceed in forma pauperis, and thereby be entitled to a waiver of all or a portion of court fees and costs.~~

~~This bill would provide that an alleged or presumed father shall be entitled to a waiver of fees and costs for appointed counsel in those paternity proceedings if the court finds that the alleged or presumed father would otherwise qualify to proceed in forma pauperis.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 3651.5 is added to the Family
- 2 Code, to read:
- 3 3651.5. (a) Incarceration of a support obligor in any
- 4 ~~county or state~~ *penal* facility for a period in excess of 90
- 5 days may be a change in circumstances upon which a
- 6 motion or order to show cause to modify and order for
- 7 modification of support may be based. In exercising its
- 8 discretion to grant or deny a motion or order to show
- 9 cause to modify support based on incarceration, the court
- 10 shall determine whether the support obligor has any
- 11 other sources of income or assets available for the
- 12 payment of support.
- 13 (b) ~~At the time of each inmate's remand to the~~
- 14 ~~Department of Corrections or the county sheriff to serve~~
- 15 ~~a sentence in excess of 90 days, the Department of~~
- 16 ~~Corrections or the county sheriff shall provide the inmate~~

~~1 with a simplified form to be used by the inmate, if he or~~  
~~2 any person is sentenced to a penal facility for a period in~~  
~~3 excess of 90 days, the county sheriff shall provide that~~  
~~4 person with a simplified form to be used by the person,~~  
~~5 if he or she is a support obligor, to request a modification~~  
~~6 of support pursuant to this chapter. It shall be the~~  
~~7 responsibility of the support obligor to complete the form~~  
~~8 and forward it to the appropriate local child support~~  
~~9 agency or superior court, as appropriate.~~

*(c) At the time of any revocation of parole, the Board of Prison Terms shall provide the former parolee with the form described in subdivision (b), if he or she is a support obligor.*

*(d) If a penal facility posts notices for inmates within the facility, that facility shall post a notice regarding the availability of the forms described in subdivision (b).*

*(e) This section shall not apply to cases in which the support obligor has been incarcerated for any offense constituting domestic violence, as defined in Section 6211, against the support obligee, including, but not limited to, the violation of any protective order, as defined in Section 6218, or any offense that could be enjoined by a protective order pursuant to Section 6320, or in cases where the support obligor has been incarcerated as a result of his or her failure to comply with a court order to pay child support.*

~~(d)~~

*(f) This section shall not be deemed to limit the right of a support obligor to seek a modification of support pursuant to any other provision of law.*

~~(e) The Judicial Council shall, on or before July 1, 2000, develop the forms necessary to implement this section.~~

*(g) This section shall become operative on July 1, 2001.*

~~SEC. 2. Section 3653 of the Family Code is amended to read:~~

~~3653. (a) An order modifying or terminating a support order may be made retroactive to the date of the filing of the notice of motion or order to show cause to modify or terminate, or to any subsequent date, except as~~

1 ~~provided in subdivision (b) or by federal law (42 U.S.C.~~  
2 ~~Sec. 666(a)(9)).~~

3 ~~(b) If an order modifying or terminating a support~~  
4 ~~order is entered due to the unemployment of either the~~  
5 ~~support obligor or the support obligee, the order shall be~~  
6 ~~made retroactive to the later of the date of the service on~~  
7 ~~the opposing party of the notice of motion or order to~~  
8 ~~show cause to modify or terminate or the date of~~  
9 ~~unemployment, subject to the notice requirements of~~  
10 ~~federal law (42 U.S.C. Sec. 666(a)(9)), unless the court~~  
11 ~~finds good cause not to make the order retroactive and~~  
12 ~~states its reasons on the record.~~

13 ~~(c) If an order decreasing or terminating a support~~  
14 ~~order is entered retroactively pursuant to this section, the~~  
15 ~~support obligor may be entitled to, and the support~~  
16 ~~obligee may be ordered to repay, according to the terms~~  
17 ~~specified in the order, any amounts previously paid by the~~  
18 ~~support obligor pursuant to the prior order that are in~~  
19 ~~excess of the amounts due pursuant to the retroactive~~  
20 ~~order. The court may order that the repayment by the~~  
21 ~~support obligee shall be made over any period of time and~~  
22 ~~in any manner, including, but not limited to, by an offset~~  
23 ~~against future support payments or wage assignment, as~~  
24 ~~the court deems just and reasonable. In determining~~  
25 ~~whether to order a repayment, and in establishing the~~  
26 ~~terms of repayment, the court shall consider all of the~~  
27 ~~following factors:~~

28 ~~(1) The amount to be repaid.~~

29 ~~(2) The duration of the support order prior to~~  
30 ~~modification or termination.~~

31 ~~(3) The financial impact on the support obligee of any~~  
32 ~~particular method of repayment such as an offset against~~  
33 ~~future support payments or wage assignment.~~

34 ~~(4) Any other facts or circumstances that the court~~  
35 ~~deems relevant.~~

36 ~~SEC. 3. Section 7634.5 is added to the Family Code, to~~  
37 ~~read:~~

38 ~~7634.5. In any action under this chapter brought by~~  
39 ~~the district attorney, or in any action or proceeding in~~  
40 ~~which the state is a party or appears on behalf of the~~

~~1 mother or child and the paternity of the child is at issue,  
2 the alleged or presumed father shall be entitled to a  
3 waiver of fees and costs for appointed counsel if the court  
4 finds that the alleged or presumed father would  
5 otherwise qualify to proceed in forma pauperis pursuant  
6 to Section 68511.3 of the Government Code.~~

~~7 SEC. 4.~~

~~8 SEC. 2. Section 17431 is added to the Family Code, to  
9 read:~~

~~10 17431. If the local child support agency receives a  
11 request for modification, pursuant to Section 3651.5, with  
12 respect to a support obligor who is the subject of an action  
13 or proceeding to establish or enforce support pursuant to  
14 this article, the local child support agency shall review the  
15 case and either make a motion to the court for  
16 modification of support or provide the support obligor  
17 with a written statement explaining why the local child  
18 support agency will not make the motion, advising the  
19 support obligor that he or she may make the motion on  
20 his or her own behalf, and providing the name and  
21 address of the appropriate superior court.~~

~~22 SEC. 5. Section 11475.19 is added to the Welfare and  
23 Institutions Code, to read:~~

~~24 11475.19. If the district attorney receives a request for  
25 modification, pursuant to Section 3651.5 of the Family  
26 Code, with respect to a support obligor who is the subject  
27 of an action or proceeding to establish or enforce support  
28 pursuant to this article, the district attorney shall review  
29 the case and either make a motion to the court for  
30 modification of support or provide the support obligor  
31 with a written statement explaining why the district  
32 attorney will not make the motion, advising the support  
33 obligor that he or she may make the motion on his or her  
34 own behalf, and providing the name and address of the  
35 appropriate superior court.~~

~~36 SEC. 6. Section 4 of this act shall only become  
37 operative if either Assembly Bill 196 or Senate Bill 542 is  
38 enacted during the 1999 portion of the 1999-2000 Regular  
39 Session, and as enacted, either of these bills adds Division  
40 17 (commencing with Section 17000) to the Family Code,~~

1 ~~in which case Section 5 of this act shall not become~~  
2 ~~operative.~~

3 ~~SEC. 7.~~

4 *SEC. 3. The Judicial Council shall develop the forms*  
5 *necessary to the implementation of Section 3651.5 of the*  
6 *Family Code by July 1, 2001.*

7 *SEC. 4. Notwithstanding Section 17610 of the*  
8 *Government Code, if the Commission on State Mandates*  
9 *determines that this act contains costs mandated by the*  
10 *state, reimbursement to local agencies and school*  
11 *districts for those costs shall be made pursuant to Part 7*  
12 *(commencing with Section 17500) of Division 4 of Title*  
13 *2 of the Government Code. If the statewide cost of the*  
14 *claim for reimbursement does not exceed one million*  
15 *dollars (\$1,000,000), reimbursement shall be made from*  
16 *the State Mandates Claims Fund.*

